APPENDIX

Revenue Act of 1936, c. 690, 49 Stat. 1648:

TITLE III—TAX ON UNJUST ENRICHMENT

SEC. 501. TAX ON NET INCOME FROM CERTAIN SOURCES.

(a) The following taxes shall be levied, collected, and paid for each taxable year (in addition to any other tax on net income), upon the net income of every person which arises from the sources specified below:

* * * * *

(2) A tax equal to 80 per centum of the net income from reimbursement received by such person from his vendors of amounts representing Federal excise-tax burdens included in prices paid by such person to such vendors, to the extent that such net income does not exceed the amount of such Federal excise-tax burden which such person in turn shifted to his vendees.

* * * * *

(b) The net income (specified in subsection (a) (1)) from the sale of articles with respect to which the Federal excise tax was not paid, and the net income specified in subsection (a) (2) or (3), shall not include the net income from the sale of any article, from reimbursement with respect to any article, or from refund or credit of Federal excise tax with respect to any article * * * (3) if under the terms of any statute the taxpayer would have been entitled to a refund from the

United States of the Federal excise tax with respect to the article otherwise than as an erroneous or illegal collection (assuming, in case the tax was not paid, that it had been paid).

* * * * *

(e) For the purposes of subsection (a) (1), (2), and (3), the extent to which the taxpayer shifted to others the burden of a Federal excise tax shall be presumed to be an amount computed as follows:

(1) From the selling price of the articles there shall be deducted the sum of (A) the cost of such articles plus (B) the average margin with respect to the quantity involved; or

(2) If the taxpayer so elects by filing his return on such basis, from the aggregate selling price of all articles with respect to which such Federal excise tax was imposed and which were sold by him during the taxable year (computed without deduction of reimbursement to purchasers with respect to such Federal excise tax) there shall be deducted the aggregate cost of such articles, and the difference shall be reduced to a margin per unit in terms of the basis on which the Federal excise tax was imposed. The excess of such margin per unit over the average margin (computed for the same unit) shall be multiplied by the number of such units represented by the articles with respect to which the computation is being made; but

(3) In no case shall the extent to which the taxpayer shifted to others the burden of the Federal excise tax with respect to the articles be deemed to exceed the amount of such tax with respect to such articles minus (A) the portion of the amount of the

Federal excise tax (or of the reimbursement specified in subsection (a) (2)) with respect to the articles which is paid or credited by the taxpayer to any purchasers as specified in subsection (f) (3) and minus (B) the amount of any increase in the tax under section 602 of the Revenue Act of 1932 for which the taxpayer under this section became liable as the result of the nonpayment or refund of the Federal excise tax with respect to the articles.

Article 3, Treasury Regulations 83, as amended by T. D. 4671, XV—2 Cum. Bull. 424, 427 (1936) provides:

Claim for Refund.—(a) (1) *Who may file claim.*—A. The *consignor* named in the bill of lading under which the product is exported shall be entitled to make claim for refund unless he shall have waived such right to the shipper. *Consignor named in the bill of lading* means the person named in the bill of lading as the person from whom the carrier received the product for shipment.

B. The *shipper*, if other than the consignor named in the bill of lading, shall be entitled to make claim for the refund only if the consignor shall have waived any claim to such refund to him. In such case, the term *shipper* means the person for whom the consignor named in the bill of lading is handling the product for shipment.

* * * * *

U. S. GOVERNMENT PRINTING OFFICE: 1945